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IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench

SECOND APPEAL NO. 145 of 2006

APPELLANTS: 1. Anuj Kumar Yadav, son of Shri Ramayan Yadav, aged 31 years, occupation agriculture, R/o. Village Mithilapur and Chharkona, Tehsil-Wadrafnagar and Kusmi, Distt. Sarguja (C.G.)

PLAINTIFFS

2. Smt. Chandrakali Devi, wife of Shri Ramayan Yadav, aged 60 years, caste-Yadav, occupation-agriculture, R/o. Village Chharkona, Tehsil Kusmi, and Distt. Sarguja (C.G.)

P.R. No. 7.9.06
Presented by Shri Sunil Mishra
dated 29.8.06

-**VERSUS**-

RESPONDENTS/ DEFENDANTS

1. Smt. Likhiya Devi, widow of Buddhi Narayan Yadav, aged 65 years

2. Surendra Kumar Yadav, son of Late Buddhinarayan Yadav, aged 40 years,

3. Sushil Ku. Yadav son of Late Buddhinarayan Yadav, aged 36 years

4. Ramakant Yadav son of Late Buddhinarayan Yadav, aged 30 years,

5. Kunjbihari Yadav, son of Late Buddhinarayan Yadav, aged 28 years

6. Vedvyas Yadav, son of Late Buddhinarayan Yadav, aged 28 years

Respondents no. 1 to 6 R/o. Village Mithilapur, Tehsil-Vadrafnagar, District Sarguja (C.G.)

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7. Khiloti Devi, daughter of Late Buddhinarayan Yadav, aged 42 years

8. Ninki alias Chandravati daughter of Late Buddhinarayan Yadav, aged 34 years

9. Budu alias Madhuri, daughter of Late Buddhinarayan Yadav, aged 32 years

Respondents no. 7 to 9, R/o. Village Putur, Post – Kataharkala, Distt Garhva (Jharkhand).

10. Chalo Devi, daughter of Late Buddhinarayan Yadav, aged 24 years R/o. Village Brijnagar, Tehsil – Vadrafnagar, Sarguja (C.G.)

11. Balkishore, son of Rampat Mahto, aged 46 years R/o Vill. Mithilapur Teh. Vandrafnagar, Sarguja, C.G.

12. Badri Prasad, son of Rampati Yadav, aged 36 years, Mithilapur, Teh. Vandrafnagar, Surguja. C.G.

13. State of Chhattisgarh, through the Collector, Sarguja, Ambikapur (C.G.)

SECOND APPEAL UNDER SECTION 100 OF CIVIL PROCEDURE CODE

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. No. 145/2006 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

18-9-2006

Dr. N.K. Shukla, Sr. Advocate with Ku. Ritu Mishra, counsel for the appellants.

Heard on admission.

The appellants have preferred this second appeal under Section 100 of Civil Procedure Code against the judgment and decree dated 16th December 2005 passed by the 2nd Additional District Judge, Fast Track Court, Ramanujganj in Civil Appeal No. 7-A/2005 whereby the appellate court dismissing the appeal preferred by the appellants has confirmed the judgment and decree dated 28-11-1997 passed by the Civil Judge, Class –I, Ramanujganj in Civil Suit No. 13-A/1993. This appeal has been preferred by the appellants on the following substantial questions of law:-

1. Whether the Court below was justified in refusing to grant further time for adducing evidence to the appellants ?
2. Whether the Court below correctly applied the provisions of Order 17 Rule 3 of C.P.C. ?

The undisputed facts as transpired from the records of both the Courts below are that the suit was posted for recording plaintiff's evidence on 15-10-1997, however witnesses on behalf of the plaintiff were not present on that day and prayer of counsel for the appellants for one more time to lead

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

evidence has been rejected on the ground that last opportunity was given to the plaintiff, even then no witnesses were produced by him and accordingly right of the plaintiff to lead evidence was closed and the matter was fixed for evidence of the defendants. Thereafter the application under Order 18 Rules 2 and 4 of C.P.C. was filed by the plaintiff, which was again rejected by the trial Court vide order dated 21-11-1997 and prayer for opportunity to lead additional evidence was rejected by a reasoned order that the plaintiff was given number of opportunities to lead evidence for the last one year, in spite of that, no witnesses were produced and in the aforesaid circumstances, the application cannot be allowed at the belated stage. Thereafter, after recording statements of defendants' witnesses, the suit was dismissed vide the judgment and decree dated 28-11-1997 with a finding that the plaintiff has not been able to prove his case. The appeal preferred by the plaintiff against the above judgment and decree has been further dismissed by the impugned judgment and decree.

Learned counsel for the appellants contended that both the Courts below have proceeded under Order 17 Rule 3 of C.P.C. as the plaintiff failed to produce evidence in spite of being given several opportunities for the same but the learned Court below ought to have allowed the plaintiff one more time

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मामला क्रमांक S.A. No. 145/2006 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

to lead evidence in the interest of justice, therefore, the substantial questions as proposed above, arise for consideration and decision of the appeal.

Taking into consideration the fact that both the Courts below after considering the material available on record proceeded under Order 17 Rule 3 of C.P.C. after closing the opportunity to lead evidence as several opportunities were already given, after getting themselves satisfied that there was a circumstance where it was necessary to proceed under Order 17 Rule 3 of C.P.C., this Court is of the opinion that no substantial question of law as proposed by the learned counsel for the appellants is involved for adjudication of this appeal. Thus the appeal being without merit is liable to be dismissed and the same is hereby dismissed at the motion stage itself.

Sd/-
Dhirendra Mishra
Judge

P/-

P.T.O.